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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,701	01/08/2002	Deenesh Padhi	AMAT/5933/CALB/COPPER/PJS	7735
32588	7590	04/26/2004	EXAMINER	
APPLIED MATERIALS, INC. 2881 SCOTT BLVD. M/S 2061 SANTA CLARA, CA 95050			NICOLAS, WESLEY A	
			ART UNIT	PAPER NUMBER

1742

DATE MAILED: 04/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No. 10/043,701	Applicant(s) PADHI ET AL.	
	Examiner Wesley A. Nicolas	Art Unit 1742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 February 2004.  
 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-26,28-36 and 43-49 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☒ Claim(s) 4-7,9,12-21,28,29,31,35,36 and 45-49 is/are allowed.  
 6) ☒ Claim(s) 1-2, 8, 10-11, 22-26, 30, 32-34, and 43-44 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This is in response to the Amendment submitted February 5, 2004. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-2, 4-26, 28-36, and 43-49 are currently pending in this application.

#### **Election/Restriction**

1. Cancellation of non-elected claims 37-42 by Applicant has been noted. Applicant may refile said claims in a divisional application.

#### **Claim Rejections - 35 USC § 102**

2. Claims 1-2, 8, 11, 22-26, 30, 32, 34, and 43-44 are rejected under 35 U.S.C. 102(e) as being anticipated by Reid (U.S. 6,458,262).

The 35 U.S.C. § 102 rejection of claims 1-2, 8, 11, 22-26, 30, 32, 34, and 43-44 has been **maintained** and is as set forth in the previous Office action which is incorporated herein.

#### **Claim Rejections - 35 USC § 103**

3. Claims 10 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reid (U.S. 6,458,262).

The 35 U.S.C. § 103 rejection of claims 10 and 33 is **maintained** and is as set forth in the previous Office action which is incorporated herein.

**Allowable Subject Matter**

4. Claims 4-7, 9, 12-21, 28-29, 31, 35-36 and 45-49 are allowable over the prior art of record.

**Remarks - Response to Arguments**

5. As a preliminary matter, it should be noted that Applicant was faxed a corrected copy of the Office action summary and page 9 of the first Office action which correctly indicated which claims were allowable over the prior art of record.

6. Turning to Applicant's arguments, Applicant argues that the prior art of Reid "depends on various measurements of the substantially organic-free electrolyte sample, not measurements of a sample of the electrolyte. Claims 1-2, 8, 11, 22-26, 30, 32, 34, and 43-44, as recited, do not depend on the presence or any measurements from an organic-free electrolyte sample." (Response submitted 2/5/04, page 12). In response, nowhere in the reading of the claims can Examiner find that an organic-free electrolyte sample is excluded by the claims. In fact, Applicant's claim 1 merely recites, "conductive species in an aqueous system". Furthermore, Applicant's independent claims include the transitional phrase "comprising" which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. Moleculon Research Corp. v. CBS Inc., 793 F.2d 1261, 229 USPQ 805 (Fed. Cir. 1986); In re Baxter, 656 F.2d 679, 686, 210 USPQ 795, 803 (CCPA 1981);

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and Ex parte Davis, 80 USPQ 448, 450 (Bd. App. 1948) which state that "comprising" leaves "the claim open for the inclusion of unspecified ingredients even in major amounts".

Applicant further argues that conductivity is not related to cell resistance (see e.g. Response submitted 2/5/04, page 13). In response, while Applicant claims measurement of "cell resistance" (in the unit of  $\Omega$ ), and Reid teaches conductivity ( $\kappa$ , in the unit of  $\Omega^{-1} \text{ cm}^{-1}$ ) which is the reciprocal of resistivity ( $\rho$ , in the unit of  $\Omega\text{-cm}$ ), cell resistance can easily be gained knowing the dimensions of the cell which are considered to be inherent properties of the cell. Therefore, similar processes can reasonably be expected to yield products (*i.e.* measurements) which inherently have the same properties. In re Spada, 15 USPQ2d 1655 (CAFC 1990).

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

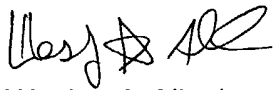
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wesley Nicolas whose telephone number is (571) 272-1247. The examiner can normally be reached on Mon.-Thurs. from 7 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King, can be reached at (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov> . Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Wesley A. Nicolas  
Primary Examiner

April 22, 2004